

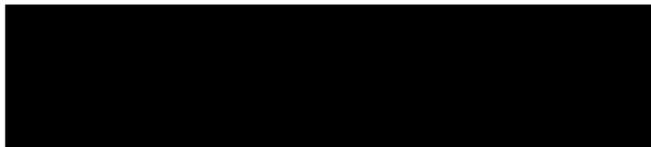


U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 25 2008
[SRC 01 167 59356]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to Vermont Service Center office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 01 167 59356 during the initial registration period. Prior to a decision being made on his initial Form I-821, the applicant filed a Form I-821 on March 8, 2005, and indicated that he was re-registering for TPS. On September 8, 2005, the Director, California Service Center, approved the March 8, 2005 application granting temporary treatment benefits since his initial I-821 was yet to be adjudicated. On April 12, 2007, the Director, VSC, denied the initial Form I-821 because the applicant had failed to establish he is a citizen or national of El Salvador and that he had been continuously physically present in the United States from March 9, 2001, to the date he filed his application.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
(2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

- (iii) The applicant is a parolee or has a pending request for reparole; or
- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The applicant has provided an El Salvadoran birth certificate with a birth date of September 29, 1953. However, the birth date on his El Salvadoran passport that he submitted on appeal lists his birth date as December 8, 1954. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Based upon this inconsistent documentation, it is determined that the applicant has failed to establish his qualifying El Salvadoran nationality or citizenship. 8 C.F.R. § 244.2(a) and §244.9(a)(1). Consequently, the application shall be denied for this reason.

The phrase *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application with Citizenship and Immigration Services on April 4, 2001.

A list of the evidence submitted by the applicant to show that he satisfying continuous residence and continuous requirements is shown below:

1. A copy of the applicant's State of Texas identification expiring on December 8, 2001.
2. A copy of a Texas vehicle inspection report dated August 31, 2002 for a vehicle under certificate number [REDACTED]
3. A copy of the applicant's State of Texas driver's license expiring on December 5, 2006.

4. A copy of a Republic of El Salvador passport issued to the applicant in Dallas, Texas, on April 26, 2007.

5. A copy of a printout dated May 2, 2007 from Westdale Asset Management in Dallas, Texas, for account [REDACTED] showing columns for charges, payments and balances for items such as utility fees, rent, and water payments from March 12, 1999 through May 1, 2002.

The identification card and driver's license listed above do not indicate when they were issued to the applicant (Items # 1 and # 3 above). The vehicle inspection report provided by the applicant is of questionable value because it does not identify him as the owner of the passenger car tested (Item # 2 above). Other than the printout dated May 2, 2007 (Item # 5 above), the applicant has not submitted any evidence to establish his continuous residence from February 13, 2001, or his continuous physical presence in the United States from March 9, 2001, to April 4, 2001, the date he filed his initial application. 8 C.F.R. §§ 244.2 (b) and (c). Consequently, the director's decision is affirmed for these additional reasons.

The applicant's Federal Bureau of Investigation fingerprint results report shows that on December 5, 2006, he was arrested by the Sheriff's Office in Dallas, Texas and charged with indecent exposure. However, the final court disposition of this arrest is not included in the record of proceeding.

In removal proceedings held on February 23, 1999, an Immigration Judge in Dallas, Texas, ordered the applicant deported "in absentia" to El Salvador. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the Acting District Director of the Dallas, Texas, office of Citizenship and Immigration Services, (formerly, the Immigration and Naturalization Service) on February 26, 1999.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.